UNITED STATES DISTRICT COURT
for the Eastern District of North Carolina

FILED
MAR 02 2017
JULIE RICHARDS JOHNSTON, CLERK
US DISTRICT COURT, EDNC
BY ___ DEP CLK

Frederick Banks, an American Indian,
#05711-068
plaintiff,

v.

Civil Action No. ______

Donald J. Trump, President of the United States of America; Ivanka Trump, Senior advisor; Jeff Sessions, U.S. Attorney General; Steve Bannon; Paul Ryan, speaker of the US House of Representatives; Mitch McConnel, speaker of the U.S. Senate; Nancy Pelosi, minority Speaker of the U.S. House of Representatives; Charles Shumer, minority speaker of the U.S. Senate; Dr. Cahill, head of psychology FMC Butner; Dr. Allissa Marquez, psychologist; Dr. Logan Graddy, psychiatrist; Dr. Heather Ross, psychologist; Dr. Robert Wettstein, Psychiatrist; Judge Mark R. Hornak; AUSA Robert Cessar; Adrian Roe, Esquire; James Comey, director Federal Bureau of Investigation; Special Agent in charge Scott Smith; Special Agent Robert Werner; Special Agent Sean Langford; Felicia Langford, AUSA; Chief Judge Joy Flowers Conti; Judge Nora Fischer; Judge Cathy Bissoon; Mike Pompeo, Director of Central Intelligence; Central Intelligence Agency; Governor, State of North Carolina; Governor, Commonwealth of Pennsylvania; Vice President Mike Pence; Supreme Court of the United States; Chief Justice John Roberts; U.S. Marshals Service; United States of America,
Defendants.

28 USC §1331
28 USC 1364
28 USC 1651
28 USC 2241

JURY TRIAL Demanded.

CLASS Action

☑ plaintiff is a civilly committed detainee. the prison Litigation Reform Act does not apply

COMPLAINT TO DECLARE 18 USC § 4241; 18 USC § 4247; AND 18 USC § 4246 UNCONSTITUTIONAL AND other Relief.

Plaintiff Frederick Banks, an American Indian hereby moves the court to Declare 4241, 4247, & 4246 unconstitutional as applied to plaintiff and in full, and for all others similarly situated. The Indian Canon of Construction, that is all statutes and constitutional provisions are construed in Indian favor, must be applied. See Choate v. Trapp — US — ( ); Dimey v. USA — F.Supp — (OC Kan 1965)

1. For the past 19 months plaintiff has been ensnared in detention and litigation involving the Insanity Defense Reform Act when he has consistently maintained and asserted he is competent, he is not pleading Insanity and he has already served more time than the Wire Fraud + other Offenses carry by the USSG Guidelines.

2. Over his objections and completely against his wishes he is on his Fifth Mental Health Evaluation, this one to restore competency to Stand trial (the evaluation is being conducted by Defendant Marquez and it seems she has found plaintiff Incompetent). The First Three evaluations were conducted between 2013 and 2016 by Dr. Robert Wettstein who found plaintiff both competent to Stand trial and to represent himself on each occassion. See USA v. Banks, 15CR168 (WDPA) and USA v. Banks 04-CR-176 (WDPA) (5 of the 7 charged Counts plaintiff faces Stem from Supervised release violations in this case and in USA v. Banks 03CR245 (WDPA) in which plaintiff served 20 months for Wire Fraud Attempts which are the Same charges from 2013 brought in the 15CR168 Case. In other words plaintiff was re-charged with offenses he already served time on and since the offenses are Attempts this credit adds 20 months to the 19 and Runs Concurrent by Statute for a total of 39 months served in 15CR168). plaintiff's guideline range if convicted is Crim History Cat. III Offense Level 12 or 15-21 months imprisonment plus 24 months for Aggravated Identity Theft at Count 6 totaling 39 months (this assumes -3 for acceptance of responsability and -3 off for the attempts at 2X1.1, USSG.) In addition plaintiff receives 9 months good time which totals 30 months to Serve. Plaintiff right now has 39 months Served and on 2/27/17 Dr. Marquez Stated "we are going to request a Sell v. USA hearing" (The Sell hearing request Stems not from Plaintiff's refusal to take psychotropic medication which he agreed to take but from his refusal to sign a form which would waive all of his legal rights to Sue in Court if there were complications from taking the proposed medication Abilify. See IN RE: Abilify products Liability Litigation 2017 US Dist Lexis 549 (DC San Fran, CA 2017); Foley v. Bristol-Myers Squibb Co. 2016 US Dist Lexis 126806 (DC Nevada 2016) (Abilify gives "an increased risk of Serious and dangerous side effects including, without limitation, uncontrollable compulsive behaviors Such as compulsive gambling."); Braumbaugh - Sandoval v. Colvin, 2016 US Dist LEXIS 111741 (DC Cal 2016) ("plaintiff reported Abilify made her angry and hungry")). The requested Sell hearings + rulings will add an additional 8 months

of confinement and additional wait times for Trial Dates and a "danger Study" if sought would add an additional 15 months of confinement totaling 62 months before the case evencomes to trial on charges that carry at most 39 months. As it applies in this circumstance and in full to plaintiff and others 18 USC § 4241, 4247, and 4246 are unconstitutional for violating Due process and Equal protection. Plaintiff according to numerous officials and evaluators is non-violent and has no history of violence See USA v. Banks, 15CR168 (WDPA) at Transcript testimony of DR Robert Wettstein (DOC 89), DR. Heather Ross and Andre Taylor, BOP counselor (Doc 205 10/3/16) yet 18 USC 4241, 4247, and 4246 allowed him to be unlawfully seized by the government without being convicted and held for beyond any imprisonment term he could receive. A violation of Due process and Equal protection and because Plaintiff at all times material was competent the unlawful seizure was unreasonable and in violation of the Fourth Amendment.

3. On 10/9/15 Judge Mark Hornak entered an order in the 15CR168 case committing plaintiff to the custody of the Attorney General under 18 USC § 4247(b). The maximum committment time under that section is 30 days with a 15 day extension. The report was complete until 12/9/15 See Doc 76 which exceeded 45 days in violation of the Due process clause. In addition plaintiff was continually committed through February of 2017 and continuing without any statutory authority to do so (on 1/8/16 the court ordered DR. Wettstein to prepare a supplemental report see Doc 92) and on 4/22/16 despite Wettstein's finding of competence on 3 occasions at the urging of Defendant Cessar the Court committed Plaintiff again to the custody of the Attorney General. Doc 139 to be sent to FCI Butner in North Carolina. Plaintiff was addmitted at FCI Butner and DR Heather Ross through the warden immediately requested an extension to conduct the evaluation which was granted to 7/1/2016. The 45 day maximum came and went and plaintiff was held beyond 45 days again until he was committed for restoration under 18 USC 4241(d) on 10/3/16 but not transferred to FMC Butner until 12/13/16 all in violation of the 4th, 5th and Due process, Equal protection and Insanity Defense Reform Act 18 USC § 4241, et seq.

4. Now at the FMC Defendants plan to keep plaintiff confined for the next 6 months at a bare minimum to a distant date far in the future when he has served any possible sentence he can get and is non-violent. By seizing plaintiff and keeping him civilly committed for beyond his prospective Guidelines sentence he could

[In USA v. Baker, 807 F.2d 1315 (6th Cir.) the 6th Circuit held that in underlying the Insanity defense Reform Act the Court acted without Statutory authority when it exceeded the Strict time frames in 18 USC § 4241(d). and held Defendant longer then entered a 4246 order. The same logic applies here.]

receive on a never ending merry go around Defendants used 18 USC §§ 4241, 4247 and 4246 as a procedural mechanism to seize plaintiff and keep him in legal limbo which abused and misused process and what the Insanity Defense Reform Act was intended for. There are strict time frames listed in 4241(d) and 4247(b) and all were violated here. In fact Plaintiff has not even received any treatment except a Competency Class ordered by Dr. Marquez but he was withdrawn from that class by Marquez when she determined plaintiff had a factual understanding of the criminal case. Logan Graddy knew absolutely nothing and still knows practically nothing about plaintiff's case yet he was quick to offer Abilify. Plaintiff specifically told Graddy that he was even tempered, slept well and had no history of suicide or Depression In addition Plaintiff is not Bi-Polar. Abilify is used to treat bi-polar and depression (some symptoms of Abilify are "Lock Jaw"), Schizophrenia and major depressive disorder. See Smith v. Colvin 2015 US Dist LEXIS 183366 (DC MO 2015); M.O. v. Abbott, 152 F. Supp. 3d 684 (SD Tex 2015) and on 2/27/17 at a meeting with Graddy + Marquez Graddy addmitted that Plaintiff's case is "Complex" In Short the mis-information and delays violated plaintiff's substantive rights under the Statutes cited above. The only person who has a detailed understanding of Plaintiff's case is Dr Wettstein who is no longer assigned and Dr. Marquez but Marquez isn't the one prescribing medications. Regardless, Abilify or not the Statutes in this instance of 18 USC 4241, 4247, and 4246 are clearly unconstitutional.

5. In addition 18 USC 4241(d), 4247, and 4246 violate the Equal protection Clause because they allow mentally ill pretrial detainees who are considered competent to stand trial to be released and this includes whether they are dangerous or non-dangerous. If a pretrial detainee has a mental illness but is competent he is not subject to 18 USC § 4241, 4247 or 4246. So those laws treat these two similarly situated classes completely differently in violation of the Equal Protection Clause and as applied to this case. Further, psychology is no exact science here, the court and government decided plaintiff was Incompetent based on a single report of Defendant Ross when it had 3 other reports by Dr. Wettstein that said plaintiff was competent. In error Defendant Hornak did not even begin to consider Dr. Wettstein's 2013 report which was filed in the 15CR168 case and Defendant Roe only sided with the government because he is a CJA attorney who wanted more appointments and did not want to be black listed from

[In this Situation 4241, 4247 + 4246 violated Plaintiff's right to a Jury Trial because it allowed the government under the bogus auspices of these Statutes to keep plaintiff confined beyond any prison term he could receive without a finding of guilt without a Jury but by a Judge.]

the CJA appointment list. Roe + Cessar even lied to Dr. Marquez they stated that they both had sat down with plaintiff's former fiance, Meredith Bonds a potential impeachment witness when they had not. See Doc 200 9/22/16 witness list by USA (stating that Sean Langford had interviewed Meredith Bonds). This was important because Cessar + Roe could not even remember the lies they told. In truth neither Roe, Cessar sat down with Meredith to interview her and there is a 99% chance that Langford lied as well because the interview concerned an issue of FBI field agent misconduct which is investigated solely by FBI headquarters. Langford is a FBI field agent so he didn't have authority by FBI policy to interview Meredith concerning FBI agent Timothy Pavnichny's misconduct aka brandishing/threatening his firearm at her with her counsel Cynthia Reed Eddy present. The issues herein are issues of first impression and the Court should not be quick to find the statutes Constitutional in this setting.

WHEREFORE, Judgment should be entered for Plaintiff and against Defendants declaring 18 USC 4241, 18 USC 4247, and 18 USC 4246 Unconstitutional along with all other recommended, requested or warranted relief. An evidentiary hearing should be ordered and a Jury Trial. Plaintiff should be discharged from unlawful confinement and a writ of Mandamus should issue against Defendants.

Since plaintiff is a civil commitment a Guardian ad Litem should be appointed and separate counsel, and class counsel to represent the class. The action should be certified as a Class Action.

Respectfully Submitted,

[signature]

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PLAINTIFF